

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 1:22-CR-00010-HAB-SLC
	)	
KENDRICK D. BATES	)	
	)	
Defendant.	)	

**OPINION AND ORDER**

This matter comes before the Court on the Government’s Second Motion to Continue Trial (ECF No. 91) (the “Motion”), filed on October 10, 2023. The four-day jury trial of this matter is set to commence on November 7, 2023. Although Defendant Kendrick Bates (“Bates”) objects to the Government’s motion, the Government’s request is based on the unavailability of FBI Task Force Officer (“TFO”) Jack Cain who they contend is an “essential witness.”<sup>1</sup> This Court, in a separate Order (ECF No. 87), has already concluded that he is. Further, TFO Cain is unavailable from October 31 through November 11, 2023, and the Court will continue the trial.

On September 20, 2023, this Court granted the Government’s First Motion to Continue Trial and set this matter for a four-day trial beginning on November 7, 2023. (ECF No. 87). According to the Motion presently before the Court, the trial date conflicts with the schedule of TFO Cain, who “will be out of state in Illinois” on a personal trip. (ECF No. 91 at 4). TFO Cain had already planned these travel arrangements and paid for this trip well before the November 7 trial date was set. (*Id.*).

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<sup>1</sup> The Court notes that to accommodate Bates, the Government discussed the possibility of stipulating to TFO Cain’s testimony in order to avoid its request for a continuance. Bates refused. (ECF No. 91 at 1-2).

The unavailability of an essential witness is grounds for a continuance and for excluding any delay from the Speedy Trial calculation. *See* 18 U.S.C. § 3161(h)(3)(A). The legislative history on the Speedy Trial Act indicates that an “essential witness” is “a witness so essential to the proceeding that continuation without the witness would either be impossible or would likely result in a miscarriage of justice.” An essential witness is considered “unavailable” when “his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.” 18 U.S.C. § 3161(h)(3)(B).

The Court presumes familiarity with its prior Order (ECF No. 87) in which it determined that TFO Cain is an essential witness. And TFO Cain will be in Illinois on a personal trip planned and paid for well in advance of the Court’s November 7 trial setting. He is unavailable from October 31 to November 11, 2023, in light of his prior arrangements. This provides sufficient grounds for a continuance.

The Government has demonstrated that it is entitled to a continuance and the Court accepts that TFO Cain is unavailable from October 31 until November 11, 2023. Mindful of the speedy trial clock, the Court determines that a continuance until December 12, 2023 is warranted.

### **CONCLUSION**

For the foregoing reasons, the Government’s Second Motion to Continue Trial (ECF No. 91) is GRANTED. All trial-related deadlines and hearing dates are VACATED. The final pretrial conference is RESET to November 28, 2023, at 4:00 PM before Chief Judge Holly A. Brady. Counsel only to appear. The four (4) day jury trial is RESET to begin on December 12, 2023, at 10:00 AM before Chief Judge Holly A. Brady. Any reports required under FRCP 16(a)(1)(G) must be exchanged on or before November 28, 2023. The deadline for parties to file a Plea Agreement is November 21, 2023. The deadline for parties to file pretrial motions or a motion to continue

trial-related deadlines is November 14, 2023. A defense motion must include the appropriate reference to the Speedy Trial Act, the proposed length of any requested continuance, the position of the Government, an indication of agreement by the Defendant and the position of Co-Defendants.

SO ORDERED on October 17, 2023.

s/ Holly A. Brady

CHIEF JUDGE HOLLY A. BRADY  
UNITED STATES DISTRICT COURT